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## III. NOTES ON COLONIES AND COLONIAL GOVERNMENT.

**The New Tax Decision.**—Attention has already been called in the ANNALS to the recent decisions of the Supreme Court dealing with the constitutionality of the taxes imposed on articles imported from Porto Rico. Since the treaty with Spain, and since the passage of the Foraker Act of April 12, 1900, respectively, the power of Congress to levy a tax on articles imported from the new possessions into the United States was well settled by these decisions. In the Diamond Rings case, decided on December 2, 1901, a somewhat different question was involved, namely, Were the Philippines a foreign country in the language of the Dingley Act, which levied duties upon goods "imported from foreign countries"? Emile J. Pepke, a soldier returning from the Philippines in January, 1899, brought with him fourteen diamond rings, which were seized by the customs authorities at Chicago on the ground that duty had not been paid. Pepke maintained that the Philippines were not a foreign country subsequent to the treaty of peace. The court upheld this view, declaring that the point involved was not substantially different from that decided in *De Lima v. Bidwell*, a Porto Rican case. This confirmation of the doctrine announced in the De Lima case may be said to place the status of the new territories and ceded districts in a clear light. By the treaty of cession the Philippines ceased to be foreign country, in spite of the resolution passed by the Senate after the ratification of the treaty, a resolution declaring "that by the ratification of the treaty of peace with Spain it is not intended to incorporate the inhabitants of the Philippine Islands into citizenship of the United States, nor is it intended to permanently annex said islands as an integral part of the territory of the United States; but it is the intention of the United States to establish on said islands a government suitable to the wants and conditions of the inhabitants of said islands, to prepare them for local self-government, and in due time to make such disposition of said islands as will best promote the interests of the United States and the inhabitants of said islands." The court declares that this resolution "is absolutely without legal significance on the question before us. The meaning of the treaty cannot be controlled by subsequent explanations by some of those who may have voted to ratify it." The court rejects the contention made by the representatives of the government that the armed resistance of the native inhabitants of the Philippines created a distinction between the Philippines and Porto Rico. "We must decline to assume that the government wishes thus to disparage the title of the United States, or to place itself in the

position of waging a war of conquest. . . . We do not understand that it is claimed that in carrying on the pending hostilities the government is seeking to subjugate the people of a foreign country, but, on the contrary, that it is preserving order and suppressing insurrection in territory of the United States."

An interesting result of the great divergence of opinion existing among the Justices of the Supreme Court is seen in the contention of the legal representatives of the United States in the suit that the ruling in *De Lima v. Bidwell* should not be given full weight as a precedent, because one of the five Justices making up the majority of the court in that decision also concurred in the *Downes v. Bidwell* decision, which affirmed the constitutionality of the Congressional act taxing goods imported into the United States from Porto Rico, while the other four members of the majority in the *De Lima* case dissented from the ruling in the *Downes* case. In its recent decision the Supreme Court declares that this fact by no means invalidates or detracts from the weight of the *De Lima* decision.

At the same time the court handed down an opinion in another action brought by Henry W. Dooley, of San Juan, Porto Rico, to recover duties paid upon merchandise imported into Porto Rico from the United States since the passage of the Foraker Act on the ground that the duties levied were unconstitutional, being in violation of Article I, Section 9, of the Constitution: "No tax or duty shall be laid on articles exported from any state." The decision turned upon the question, Is a tax on articles imported into Porto Rico from the United States in reality a tax upon exports from any state in the meaning of the Constitution? The court holds that such duties were taxes levied upon imports into Porto Rico rather than upon exports from the United States. "Now, while an import into one port almost necessarily involves a prior export from another, still, in determining the character of the taxed imports, it is important to consider whether the duty be laid for the purpose of adding to the revenues of the country from which the export takes place or for the benefit of the territory into which they are imported." Applying this test it is found that the duties were levied solely for the benefit of Porto Rico.

The more important decisions thus far rendered, on the taxation of imports to and from the new dependencies, may be thus summarized:

*First*—Previous to the signing of the treaty of peace, and while a district is in the possession of the military arm of the government, the restrictions of the Constitution in general do not apply, and the territory is for all practical intents and purposes part of a foreign country.

*Second*.—After the treaty of peace providing for the cession of the

territory to the United States, and previous to legislation on the subject by Congress, the territory may not be regarded as foreign in the sense of our customs laws, therefore import duties levied on "goods coming from foreign countries" do not apply to imports from such territories or districts.

*Third.*—Congress may, however, by legislation, levy duties on goods coming from such territories.

*Fourth.*—Such duties levied by Congress need not be uniform.

*Fifth.*—Congress or the legislature of the territory may by law levy duties upon articles imported into the territory from the United States without violating the constitutional prohibition against duties on goods exported from the United States.

**Proposed Changes in German Colonial Government.**—In a previous number of the ANNALS a brief summary of German colonial conditions was given, showing that the character of the government lacked entirely any element of representation from the side of the colonies. Considerable discussion has recently been excited in Germany by the proposals of Professor Hans Meyer in reference to the further development of the German colonial system. Professor Meyer has made a study of the French and English colonial finances and finds that in England especially, and recently also in France, the practice has been adopted of introducing at the earliest possible moment an independent budget for each colony, so that receipts and expenditures shall be balanced. This practice he contrasts with the German policy of making considerable appropriations from the imperial budget to the African colonies. Professor Meyer also suggests that colonial councils, composed of prominent colonists, should be established for the purpose of advising the central government and as a basis for the development of local self-government in later years. Briefly summarized, the more important points of the plan or program proposed are as follows:

*First.*—For each dependency an advisory body should be provided to assist the governor. This council should be not only an advisory body, but for important matters affecting the dependency should be given powers of decision. Where possible a part at least of the council should be elected by the German citizens in the colony.

*Second.*—The system of local communal councils for advisory and other purposes, which has already been established in East Africa, should be extended to other dependencies.

*Third.*—The governor and council should constitute a legislative body, which should have the power to determine all financial matters connected with the local administration of the dependency.

*Fourth.*—Colonial expenses should be determined by receipts, the

colonial budget being drawn up by the governor and council subject to the approval of the home government. No purely colonial expenditures should be undertaken by the imperial government; the responsibility of the latter should be limited to undertakings of a nature affecting the empire.

*Fifth.*—The colonies should retain a common agency in Germany, for the purpose of making contracts for public works, superintending the purchase of material needed in the colonies, etc., after the English fashion.

These proposals, which originally appeared in an article published in the *Tägliche Rundschau*, have especially attracted the attention of the German Colonial Society, and are being eagerly discussed by the colonial experts in the *Deutsche Kolonial Zeitung*, the official organ of the society.